

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0083 CS

Controlled Substance Excise Tax

For Tax Periods: 06/22/93, 07/02/93, 12/14/93

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5; IC 6-7-3-6

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

The Indiana State Police had made two controlled “buys” from taxpayer without arresting him. These buys took place on June 22, 1993 and July 2, 1993. Taxpayer was arrested on December 14, 1993 during a third buy. The Department assessed controlled substance excise tax on December 16, 1993 based on the combined weights of the controlled substances. The weights from the first two occurrences came from the police lab reports. The weight from the third occurrence came from the Department’s scales as weighed by an agent of the Department. The assessment was based on a total weight of 5,582.80 grams of marijuana. Taxpayer protested the assessment. Additional relevant facts will be provided below, as necessary.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance excise tax is determined by:

- (1) the weight of the controlled substance. . ."

Upon taxpayer's arrest, the Department calculated the assessment and served the taxpayer with notice of the assessment on December 16, 1993.

Taxpayer first disputes the weights of the marijuana which were the basis of the assessment. Taxpayer claims substances, other than controlled substances, were included in the weights. Taxpayer provides no information which supports his claim. However, upon reviewing the information available to the Department it appears the correct total weight should have been 5,546.3 grams rather than 5,582.8 grams. The difference in weight is due to a plastic bag that was wrapped around the marijuana at the time of weighing. The assessment will be adjusted to reflect this change in the total weight.

Taxpayer next claims there was no meaningful possession of the marijuana on his part. Taxpayer claims to have been an agent for the police for the purpose of purchasing the marijuana as he acquired the marijuana from a third party in order to sell it to the undercover officer. However, taxpayer provides no evidence of his "agent" position or that he was even aware the buyer was a law enforcement officer. Taxpayer's argument fails. Taxpayer fails to persuade the Department possession, for the purpose of the controlled substance excise tax, requires ownership or physical control of the marijuana for a specified period of time.

Taxpayer finally argues the monies paid to the police agencies should be credited to the liability owed to the Department. Taxpayer claims these funds are used for the same purposes anyway. The Department will not adjust an assessment based on amounts paid to other non-related agencies as required by a criminal proceeding.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer's assessment will be adjusted to reflect the change in weight, as provided above.